

MEMORANDUM THRU Chief, New York Application Evaluation Section
FOR District Commander

SUBJECT: Environmental Assessment and Statement of Findings for
Department of the Army Permit Application No. **95-987-30(1)**

1. This document constitutes the Environmental Assessment and Statement of Findings for Department of the Army Permit Application No. **95-987-30(1)** by **Oneida-Herkimer Solid Waste Management Authority**. This document is in accordance with the requirements set forth in the Final Rule for the Regulatory Programs of the Corps of Engineers (33 CFR 320 et. seq.), the policies and procedures for implementation of the National Environmental Policy Act (33 CFR 230), where applicable the Guidelines for Specification of Disposal Sites for Dredged or Fill Material (40 CFR 230), and other pertinent regulations and guidelines.

2. A Public Notice describing the proposed project, its purpose, and location was distributed to the appropriate Federal, State and local agencies, and the general public in accordance with the requirements of 33 CFR 325.3. A copy of the Notice and its mailing list are in the file for this application.

a. Prior to publication of this Public Notice the project was reviewed with regard to the following laws: Section 106 of the National Historic Preservation Act of 1966; Section 7 of the Endangered Species Act; The National Environmental Policy Act of 1969; Section 7(a) of the Wild and Scenic Rivers Act; The National Fishing Enhancement Act of 1984; and, Section 302 of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended. The Notice notes any potential involvement of the project with these laws.

b. This proposed project requires Department of the Army authorization pursuant to:

Section 404 of the Clean Water Act (33 U.S.C. 1344).

c. Background information for this project:

The Oneida-Herkimer Solid Waste Management Authority, 1600 Genesee Street, Utica, New York 13502, has applied for a Department of the Army permit to place fill into approximately 46.6 acres of regulated wetlands for construction and operation of a sanitary landfill on an approximately 532 acre parcel in the Town of Ava, Oneida County, New York. The wetlands are adjacent to the south branch of Moose Creek, a tributary to the Black River, a navigable water of the United States.

The Corps of Engineers regulates the discharge of fill for the initial earthwork and other physical features, such as associated structures and sedimentation ponds, of the proposed landfill.

SUBJECT: Environmental Assessment and Statement of Findings for Department of the Army Permit Application No. 95-987-30(1)

The Corps has no regulatory authority over the subsequent use or operation of the facility nor does it influence the site selection process beyond the limits of its regulatory jurisdiction such as impacts to the aquatic environment. This environmental assessment and statement of findings represents the Corps analysis and decision based on all information gathered during our public interest review process.

The Oneida-Herkimer Solid Waste Management Authority (Authority) has identified site WLE-5 East as the preferred alternative for the proposed construction of a full-service sanitary landfill. The site is located south of New York State Route 294 and west of Gleasman Road (formerly Germanski Road) (Sheets 1 and 2 of 7).

The proposed construction zone within the project footprint, including both the landfill and support facility areas is approximately 252 acres. The remaining 280 acres of the parcel are proposed to act as buffer between the landfill and the surrounding properties. The proposed landfill has a projected life span of 62 years. The proposed 46.60 acre wetland impacts would occur over a period of 52 years. Initial construction would result in the impact of 19.72 acres of wetland. The remaining Federal wetland impacts would be phased along with development of the landfill (Sheet 3 of 7).

The wetland cover types to be impacted include: 32.53 acres of wet meadow; 11.71 acres of scrub shrub; .99 acre of deciduous forest; .11 acre of evergreen forest; 1.14 acre of mixed forest; and .12 acre of open water (Sheet 4 of 7). Wet meadow, the largest block of wetland type to be impacted, consists of low quality cow pasture with little wildlife habitat value. The vegetative cover in these areas is limited to grasses primarily due to the grazing of cattle. The main function of these areas at present is flood storage. The scrub shrub and wooded areas provide somewhat better habitat but only because they have not been subjected to grazing pressures by livestock.

The proposed development avoids approximately 123.6 acres of much higher quality wetlands, including deciduous forest, evergreen forest, emergent marsh, open water, scrub shrub and wet meadow habitats. The avoided areas contain substantially better wildlife habitat and should not be adversely affected by the proposed development. The south branch of Moose Creek runs along the eastern boundary of the property. In addition, several tributaries of the south branch of Moose Creek exist on the site. The northernmost of these tributaries will have a culverted crossing to allow access to the site. No other impacts are proposed to Moose Creek or its tributaries.

A number of forms of mitigation have been proposed to compensate for wetland impacts. The Authority has proposed the creation of 32.62 acres of wet meadow on and near the WLE-5 site and funding for restoration of a minimum of 22 acres of wetland within the Black River drainage basin. Additionally, mitigation will be provided through the acquisition of approximately 56 acres of

SUBJECT: Environmental Assessment and Statement of Findings for Department of the Army Permit Application No. 95-987-30(1)

ecologically significant habitat at the Rome Sand Plains in Oneida County. The on-site mitigation would be phased along with construction of the landfill (Sheet 7 of 7).

The Authority selected the WLE-5 East site following a multi-tiered selection process developed in coordination with the New York State Department of Environmental Conservation (NYSDEC). This process included a desk review of 149 sites within Oneida and Herkimer Counties. Seventy of these sites were eliminated due to either mapped wetland constraints or a combination of mapped wetland constraints and other limitations. Each of the 79 remaining potential sites were evaluated for a number of social and environmental parameters. The sites were then ranked and the best sites were chosen for a more in-depth review. Finally, the top two sites were slated for extensive field investigations to determine their suitability for landfill siting. These two sites included the WLE-5 west site and the Tannery Road site, which was the site of an old, existing landfill.

During on-site investigations, the applicant determined, in consultation with NYSDEC and the Corps, that the WLE-5 east site was more favorable for further consideration than the WLE-5 west site. This determination was based, in part, on the quality of wetlands which existed in the potential work areas of both sites. Following on-site investigations of both the Tannery Road and WLE-5 east sites, the Authority decided to pursue the WLE-5 east site as the preferred alternative for the potential landfill site. This decision was based upon input received from various sources, including NYSDEC and the Corps in consideration of environmental factors and other factors.

Public meetings, hearings and information sessions were held by the Authority during the siting process to ensure that the public was allowed to comment fully on the proposal. Draft and Final Environmental Impact Statements were developed as part of the State Environmental Quality Review Act review process. These impact statements presented data regarding project need, site description, project background/history, proposed waste characteristics and quantities, landfill design, monitoring and closure plans, post-closure monitoring, transportation plans, economics, host community compensation possibilities, environmental characteristics of the proposed site, local community characteristics, proposed impacts including changes in topography, groundwater table, air quality, ecological resources, wetlands, demography, noise and viewshed, cumulative impacts, and project alternatives. In addition, the Final Environmental Impact Statement included 304 pages of comments generated during review of the Draft Environmental Impact Statement by agencies and the public and responses to these comments. The environmental impact statement provided a full and fair discussion of all potential environmental impacts and informed all parties of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment. The statement also served as the source document for the application to the NYSDEC and the U.S. Army Corps of

SUBJECT: Environmental Assessment and Statement of Findings for
Department of the Army Permit Application No. 95-987-30(1)

Engineers for the necessary permit authorizations.

Following the issuance of the Corps public notice for this project and receipt of initial comments, joint public hearings were held with the Corps and NYSDEC on August 10, 2000 at 2:00 PM and 7:00 PM to allow for further comment on the proposed landfill. These hearings were chaired by the Honorable Edward I. Buhrmaster, administrative law judge for NYSDEC and Major Chris Hall, Deputy District Commander for the Corps Buffalo District. Transcripts from these hearings are part of the administrative record for this application.

Comments generated during the Corps evaluation of this proposal and responses to these comments are discussed below.

d. Comments received from Federal, state and local agencies in response to the Public Notice were considered and are summarized below:

USFWS	RECOMMENDED MODIFICATIONS OR CONDITIONS
USEPA	RECOMMENDED MODIFICATIONS OR CONDITIONS
NYSOPRHP	NO OBJECTION
NYSDEC	NO ACTION

Agency Codes (used above and elsewhere in this document):

USFWS	- U.S. Fish and Wildlife Service
USEPA	- U.S. Environmental Protection Agency
NYSOPRHP	- New York State Office of Parks, Recreation and Historic Preservation
NYSDEC	- New York State Department of Environmental Conservation

Comments provided by the above referenced agencies of specific importance to this project:

The resource agencies, including the U.S. Fish and Wildlife Service (USFWS), the Corps, NYSDEC and the U.S. Environmental Protection Agency (USEPA) were consulted on an ongoing basis during the siting process and development of the project site plan.

Comment: The USFWS indicated that it was satisfied that "... the applicant had performed a thorough off-site alternatives analysis that included wetland impacts as a primary consideration." In addition, USFWS indicated that the applicant had minimized wetland impacts on the site by avoiding the larger and higher quality wetlands around the project perimeter. USFWS further indicated that the mitigation package appeared to be sufficient to compensate for proposed wetland losses. USFWS indicated that it would have no objection to the issuance of a permit provided the following two conditions are satisfied:

1. The applicant provides USFWS with monitoring

SUBJECT: Environmental Assessment and Statement of Findings for
Department of the Army Permit Application No. 95-987-30(1)

reports for the created and restored mitigation wetlands, beginning one year after creation or restoration is completed and continuing annually for five years.

2. All wetlands remaining on site and the created/restored wetlands are protected in perpetuity through protective land covenants.

Corps Response: If a Department of the Army permit is issued for this proposal, the requested special conditions will be added.

Comment: The USEPA responded that it had been involved with the review of the environmental documentation for the landfill site for approximately 5 years. Further, USEPA indicated that the wetlands to be impacted at best represented low to moderate value. Other, higher quality wetlands exist on the site and the project footprint has been designed to avoid or minimize impacts to these high quality wetlands. They indicated no objection to the issuance of a Department of the Army permit for the proposed work. USEPA recommended that appropriate conditions be placed on the permit, if issued, concerning conservation easements, success criteria and monitoring for the created and restored wetland sites, and for the preservation of the habitat in the Rome Sand Plains in perpetuity.

Corps Response: As indicated above, if a Department of the Army permit is issued for the proposed project, the requested special conditions will be added.

Comment: The New York State Office of Parks, Recreation and Historic Preservation (NYSOPRHP), the State Historic Preservation Office for New York State, worked with the applicant for several years to resolve concerns associated with the site. The property is the site of an 18th century homestead and a reputed cemetery for two infant girls. In order to resolve the concerns, an archaeological study was conducted on the project site. The study failed to locate the grave sites and recommended that a professional archaeologist monitor construction at the site. The applicant subsequently agreed to this condition and developed a monitoring plan which was accepted by NYSOPRHP on November 24, 1999.

Comment: The New York State Department of Environmental Conservation (NYSDEC) retains primary jurisdiction over the siting, construction, operation and maintenance of landfill facilities in New York State. NYSDEC is currently evaluating the project in its own separate review process. This process includes, but is not limited to the evaluation of groundwater pollution, air pollution, stormwater management, waste transport, State wetlands, siting, operation and closure issues for the landfill facility. NYSDEC did not officially comment in response to our public notice.

SUBJECT: Environmental Assessment and Statement of Findings for
Department of the Army Permit Application No. 95-987-30(1)

e. Comments received from the public in response to the Public Notice were considered and are summarized below:

The proposed landfill project generated considerable public comment. Comments have been grouped together and are summarized as follows:

Wetland Issues: Many commentors indicated that the proposed wetland impacts should not be allowed, as these resources should be protected against development. In addition, many commentors indicated that the proposed groundwater suppression system will cause the hydrology to be altered in the avoided, high quality wetlands. In addition, those opposed to the landfill hired a wetlands scientist who indicated that the wetland areas were larger than what was shown in the Corps' approved delineation.

Corps Response: The project site does, in fact, contain substantial wetland acreage. In addition, the proposed wetland fill acreage (46.6 acres) represents a large aquatic resource impact. Part of the siting criteria for landfills is to locate them on tight, very slowly permeable or impermeable soils. These soils are often located in areas that contain wetlands, particularly perched wetlands. Therefore, some wetland impacts, are anticipated in a site as large as this one. The project site is an active dairy farm with cows wandering free throughout much of the open space, including the majority of the wetland areas to be filled. The wetlands that will be impacted are the lowest quality wetlands on the site, do not provide substantial wildlife habitat areas and have been extensively disturbed by grazing livestock and the invasion by Reed canary grass (*Phalaris arundinacea*). These wetlands provide little habitat value, and primarily function as temporary flood storage and sheet flow attenuation. Extensive areas of high quality wetlands exist on the perimeter of the site. However, these areas will be avoided and subsequently preserved through perpetual real estate covenants such as conservation easements. These wetlands represent several different habitat types, including open water, emergent marsh, scrub shrub and wooded wetland.

With regard to the potential for the proposed groundwater suppression system to adversely impact the remaining wetlands, the applicant's engineer has studied the hydrology of the site and determined that these wetlands are fed primarily from surface flow and precipitation. The report indicated that the amount of water drawn from the groundwater suppression system and the leachate removal system will have only minimal impacts to these wetland areas. Based upon our review of the information submitted, it appears reasonable that the primary source of water for the on-site wetlands is precipitation and sheet flow, with groundwater being only a minor input. However, if a permit is issued for the proposed project, a Special Condition will be added requiring that these wetlands be monitored for possible adverse impacts. If these wetlands are adversely impacted, remedial measures will be required.

SUBJECT: Environmental Assessment and Statement of Findings for
Department of the Army Permit Application No. 95-987-30(1)

Corps' permit program regulations specifically require that no permit shall be issued for a wetland fill unless impacts have been avoided and minimized to the maximum extent practicable. On this site, I have determined that the applicant has avoided the highest quality wetland areas and has minimized the impacts to those that are committed to the project. This determination is supported by comments received from USFWS and USEPA.

In reference to the concerns raised about the accuracy of the submitted wetland delineation, the bulk of these comments referred to the potential for more of the site to be classified as NYSDEC wetlands. The submitted information indicated that the Federal jurisdiction wetlands to be impacted were actually approximately 48 acres. The wetland acreage was field verified by Corps personnel and affirmed in 1997. A careful review of the consultant's report submitted by those opposing the landfill did not reveal sufficient information to justify a reevaluation of the Corps' 1997 affirmation.

Wetland Mitigation: Several commentators indicated that the proposed wetland mitigation, particularly the preservation of land in the Rome Sand Plains area, was inappropriate. Several commentators also stated that mitigation (man-made) wetlands are inferior to natural wetlands that have evolved over time.

Corps Response: The applicant proposes to replace on-site wetland functions of the impacted wetlands (primarily flood storage and sheet flow attenuation) by constructing an extensive stormwater management system. In addition, the applicant proposes to construct approximately 32.6 acres of wet meadow/scrub shrub areas on-site in order to compensate for the loss of marginal wildlife habitat provided by the existing wet meadow to be lost. In order to ensure that there is no net loss of wetland acreage within the greater Black River watershed area, the applicant proposes to fund restoration of not less than 22 additional acres within the Black River watershed. The location of the additional wetland restoration has not been determined as of the writing of this document. However, if a permit is issued for the proposed project, a special condition will be added to ensure that the restoration site is identified and a conceptual mitigation plan is submitted to this office prior to commencement of work in waters of the United States at the landfill site. Finally, the applicant proposes to permanently preserve, through a donation to the Nature Conservancy, a parcel of land comprising approximately 88 acres within the regionally important Rome Sand Plains area. This parcel contains approximately 57 acres of high quality and rare coniferous wetland. The Rome Sand Plain preservation is not required to ensure no net loss of wetlands at the project site, rather, it is additional mitigation beyond what is absolutely required. The Authority has proposed this additional component of the overall mitigation package to ensure that, not only will there be no net loss of wetland functions and values on the site, there will be a regional environmental benefit as a result of the project.

SUBJECT: Environmental Assessment and Statement of Findings for
Department of the Army Permit Application No. 95-987-30(1)

With regard to the assertion that man-made wetlands do not function as well as natural wetlands, I agree that high quality wetlands are very difficult to replicate and take years to establish. However, the wetlands to be impacted are primarily disturbed wet meadow habitat dominated by reed canary grass (*Phalaris arundinacea*), an invasive species which tends to out-compete more desirable vegetation. Replacement of these wetlands with resources of higher value will add functions and values that presently do not exist at the site. Replication of the types of wetlands to be lost at the project site is technologically feasible and has been successfully demonstrated in the past at other locations. If a permit is issued, a Special Condition will be included requiring that a detailed mitigation plan be submitted to the Corps of Engineers and approved prior to commencement of work within waters of the United States on the project site. In addition, annual monitoring reports will need to be submitted to the Corps for the first five years following the construction of the mitigation wetlands to ensure that the created wetlands are developing as anticipated. If the wetlands fail to develop as proposed remedial measures can be required.

Stream Impact: Commentors indicated concern that the proposed landfill would contaminate streams due to uncontrolled site runoff or tainted groundwater. Some commentors indicated that, if (when) an accident occurs, contamination will destroy trout habitat and foul both Lake Ontario (via the Black River) and the Mohawk River.

Corps Response: The applicant's stormwater management system, regulated by the NYSDEC, will ensure that Moose Creek is not contaminated by surface runoff. The project site is not within the Mohawk River watershed. With regard to potential contamination of groundwater, the landfill will be constructed with a double liner and groundwater suppressions system to ensure that no leachate regulated by the NYSDEC from the landfill escapes the project site. In addition, the landfill site was chosen by the authority in part, because of the slow permeability of the underlying soils. These soils add an extra layer of protection so that if a leak occurs, the plume will remain on site where appropriate control and remediation measures can be applied. The NYSDEC has stated that this type of landfill design has been required and used in New York State and to date has not resulted in groundwater contamination. Specific details of liner design and function are beyond the scope of the Corps of Engineers regulatory permit program. Specific regulatory authority is asserted by the NYSDEC in accordance with Part 360.

Groundwater Concerns: The landfill opponents retained a geologist who reviewed the available groundwater data and concluded that the project site overlays a buried valley aquifer. Many commentors indicated great concern that, if this is the case, a failure of the liner system would create a contamination problem for several adjacent municipalities.

Corps Response: The Authority has employed a landfill design

SUBJECT: Environmental Assessment and Statement of Findings for
Department of the Army Permit Application No. 95-987-30(1)

that is consistent with current technologies. Substantive hydrogeological issues are more appropriately addressed by the NYSDEC, which has the expertise and regulatory authority to identify aquifer systems and alter landfill siting projects accordingly. With regard to this issue, the NYSDEC has determined that the project site does not overlay a principle aquifer and does not pose a threat to surrounding communities or their groundwater supplies.

Project Need: Most of the comments received indicated that there was no pressing need to construct a landfill in Oneida-Herkimer Counties, that there was enough capacity at existing landfills in New York State or Pennsylvania to accommodate all of the Oneida-Herkimer region indefinitely. Commentors indicated that the proposed landfill would not be able to make enough money to remain viable, given the Authority's projections of price and waste stream. Several commentors cited a recent decrease in tipping fees at other landfills around the State. In addition, many commentors pointed to the nearby landfill in Rodman, New York, which recently received approval to expand its service area to a 100 mile radius. This service area includes all of Oneida and Herkimer counties. Commentors argued that the project could not be the least environmentally damaging practicable alternative if existing landfill capacity existed at other sites for the same cost. In addition, some commentors indicated that waste should be exported to existing incinerators or transported out west for disposal.

Corps Response:

The need for the landfill is determined by the Authority pursuant to applicable State standards. Examining the need for the landfill is beyond the scope of the Corps permit program and is the subject of thorough examination and approval by the NYSDEC. Nevertheless, I have fully considered comments relating to facility need.

Virtually all of the commentors opposed to the landfill cited a "glut" of capacity at other facilities in or near New York State. In order to address the question of existing landfill capacity, I referred to the "New York State Solid Waste Management Plan 1999-2000 Update" published by the NYSDEC. This plan describes the various waste disposal strategies used within New York State, including important issues such as the pending closure of the Fresh Kills landfill in New York City. The management plan indicates that landfilled material has experienced a significant drop between 1988 and the present, to approximately 9.4 million tons from approximately 18.4 million tons (excluding the Fresh Kills landfill). These reductions are based largely on aggressive recycling efforts, such as those administered by the Authority and the use of waste-to-energy facilities. However, most of these reductions came between 1988 and 1995, with the landfilled material becoming more stable in the last few years. The management plan, while encouraging additional recycling efforts, does not forecast continuing decreases of landfilled

SUBJECT: Environmental Assessment and Statement of Findings for Department of the Army Permit Application No. 95-987-30(1)

material such as was achieved from 1988-1995.

Currently permitted and available capacity for the State of New York landfills (excluding Fresh Kills) is approximately 64,778,200 tons, or less than seven years at current disposal rates. Future capacity, including the proposed Ava landfill, currently under review, is approximately 56,545,000 tons, or approximately six years at current disposal rates. Waste-to-Energy facilities in 1999 had a capacity for 3,845,206 tons, but processed 3,659,393 tons or approximately 95 per cent capacity. The two waste-to energy facilities with the most capacity were located in Niagara County and Suffolk County, but even these facilities could only accommodate approximately one-fourth of the anticipated Oneida-Herkimer County waste stream. Transportation of waste to western states is not a financially practicable alternative.

Of the existing, lined landfills with available capacity, only one would be able to accommodate the entire Oneida-Herkimer waste stream. This landfill is the Ontario County landfill, which had approximately 237,500 tons/year unused capacity under their existing permit. However, if this capacity was used, their permit life, given total capacity of the landfill would only be approximately 4.7 years. The DANC landfill in Rodman has a NYSDEC permit to receive 246,480 tons of waste per year. In 1999, according to the NYSDEC management plan, they received 245,323 tons, or approximately 99.5 per cent of its capacity. Preliminary discussions were held between the Authority and the DANC landfill operators several years ago, regarding the potential use of the DANC landfill for some of the Oneida-Herkimer waste stream. However, in order to be able to accept any meaningful portion of the Oneida-Herkimer waste, the DANC part 360 permit would need to be modified, which would include full NYSDEC review. The request for such a modification would need to come from the DANC landfill, and to date this has not occurred. As stated above, the proposed use of capacity not currently under permit is not a practicable alternative.

Two unlined landfills, Seneca Meadows and CID, had available capacity for the Oneida-Herkimer waste stream, but the Authority has indicated that it will not use these landfills for environmental reasons. I concur that sending waste to an unlined, out-of-date landfill is potentially more environmentally damaging than putting that waste in the proposed landfill, constructed with state of the art liners and leachate collection systems. It is possible that the waste stream could be segmented to be taken at many different landfills, however, a request for proposals issued by the Authority in 1997 yielded only five responses, three from within New York State and two from out-of-state facilities. If the perceived overabundance of available capacity actually existed, more responses would have been expected.

Some commentators indicated that the waste should be taken out of state for disposal. This is a tenuous solution, as the

SUBJECT: Environmental Assessment and Statement of Findings for Department of the Army Permit Application No. 95-987-30(1)

regulatory climate for interstate waste transport is uncertain in the long run. Several states, including Pennsylvania, have been lobbying Congress to enact legislation to allow states to control the flow of waste across State boundaries. As of April 24, 2000, seven bills had been introduced to Congress which addressed this issue in one form or another (H.R. 378, H.R. 379, H.R. 891, H.R. 1190, S. 533, S. 663 and S. 872). Currently, states cannot regulate incoming or outgoing waste because it qualifies as interstate commerce, which, under the U.S. Constitution, may only be regulated by the Federal government. Recent court decisions reinforced that local flow control laws were not constitutional, absent a Federal statute. However, if one of the bills before Congress is passed and signed, the export market could change dramatically, as approximately 4.1 million tons of waste was exported out of New York State in 1998 (NYS Solid Waste Management Plan). As a result, transportation of waste out of state is not considered to be a long term practicable alternative.

As indicated above, several commentators cited recent decreases in tipping fees in New York State and indicated that these changes make the project unfeasible and unnecessary. The recent changes in tipping fees at landfills across the State have shown that the solid waste market is quite volatile. Some of the drop in tipping fees is likely a result of the flow control court decisions. If Federal legislation previously discussed is passed allowing flow control, prices could once again rise. In addition, it is far from certain what, if any, impact the closure of Fresh Kills will have on the market, as the waste stream at Fresh Kills in 1997 was approximately 13,000 tons per day or 4.7 million tons per year. To date, most if not all, of this waste is scheduled to be exported from New York State. The release of this amount of material onto the open market, particularly if flow control legislation is enacted, could have a profound impact on tipping fees and available capacity.

The applicant retained a private consultant to perform a market analysis of the solid waste in New York. This report, released in 1997, indicated that the proposed landfill would be financially competitive with other waste disposal options. I have not given this report much consideration because the information it contains is somewhat outdated.

One of the primary objectives of the Authority is to ensure a reliable, long term option for Oneida-Herkimer Countys' waste stream. This objective included a way to buffer the service area from some of the potential market fluctuations and uncertainties. In light of the potential limited overall capacity within the state and volatility of the solid waste market, the construction of a new landfill in Oneida-Herkimer Counties would seem a prudent option. As has been stated by both the proponents and the objectors to this landfill, Oneida and Herkimer Counties are not the most affluent counties in the state. Therefore, it is possible that these areas could be subject to substantially higher costs if the market tightens, either through reduction of

SUBJECT: Environmental Assessment and Statement of Findings for Department of the Army Permit Application No. 95-987-30(1)

interstate transport or the influx of New York City waste.

Corps regulations state, with regard to project need that "... it will generally be assumed that appropriate economic evaluations have been completed, the proposal is economically viable, and is needed in the market place"(33 CFR 320.4(q)). The regulation also indicates that the Corps "in appropriate cases, may make an independent review of the need for the project, from the perspective of the overall public interest." However, the intent of this portion of the regulation is that the evaluation be a general evaluation of the public and private need for the project, not an independent evaluation by the Corps with regard to the need for the project in the marketplace.

Other Alternatives: Some commentators argued that there should be more effort dedicated to increase recycling or investigating new technologies such as microbes that digest waste and eliminate the need for landfilling.

Corps Response: The Authority currently administers extensive recycling and composting programs within the two county region. These programs have resulted in a reduction in the overall waste stream. However, there remains the question of disposal of waste that is not recyclable. Current recycling technologies and markets cannot accommodate the entire waste stream. A significant fraction of this waste stream must still be handled another way. Microbial digestion of household and industrial waste is not, at present, a practicable option given current technologies.

Vectors: Many commentators expressed concern that the project would attract disease vectors and nuisances such as seagulls and rats. These commentators indicated that landfills are notorious for attracting these types of animals, which can bring disease and create a safety hazard.

Corps Response: The applicant proposes to use vector control methods such as pyrotechnics and recordings to disperse seagulls and other nuisance birds. Ground vectors such as rats are best controlled by good on-site housekeeping. A representative of the Rodman landfill was contacted about their experience with vectors. He indicated that the pyrotechnics are quite effective and are used approximately once per hour during business hours. Once the cover is placed over the open face, no further action is needed until the following operational day. With regard to rats, the representative indicated that they don't see many and again that the key is good housekeeping and providing appropriate cover after business hours. The Corps does not have jurisdiction over day-to-day operations of the landfill. These aspects of the project are appropriately regulated under NYSDEC regulations.

Traffic: Several commentators indicated that the landfill site was inappropriate because there would be a substantial increase in the amount of traffic due to waste haulers and leachate transport trucks. These commentators also indicated that this area has the

SUBJECT: Environmental Assessment and Statement of Findings for Department of the Army Permit Application No. 95-987-30(1)

highest snowfall rate in the two county area and is a long way from the waste stream sources of Utica and Rome. The combined effect of these factors, they indicated was an unacceptable traffic safety hazard.

Corps Response: The Corps of Engineers has no regulatory jurisdiction over traffic flow patterns or congestion concerns. However, these concerns have been addressed by the New York State Department of Transportation (NYSDOT). During the Week of January 15, 2001, Mr. James Papaleo, Regional Permit Coordinator, Region 2 NYSDOT, was contacted regarding this project. He indicated that a traffic safety study had been performed regarding the increased truck traffic caused by the proposed landfill. NYSDOT indicated that the applicant would have to perform some road upgrades to reduce safety concerns, but that the increased traffic load was well within the amount of general traffic that the roads could handle safely. A NYSDOT Highway Work Permit has been issued for this project. The Corps has no specific jurisdiction over issues of traffic safety, and defers judgement to the NYSDOT, the appropriate regulatory authority on these issues.

Air Pollution: Several commentors indicated that they believed the landfill would result in increased air pollution, unpleasant odors, and health concerns. The landfill opponents' counsel, upon review of the Authority's air modelling study indicated that the project would result in violation of ambient air quality standards for vinyl chloride and acrylonitrile.

Corps Response: The facility will need, as part of their Part 360 authorization, to comply with all applicable air quality standards. These standards are enforced by the NYSDEC and are beyond the regulatory authority of the Corps of Engineers.

Proximity to Schools: The proposed landfill site is within a few miles of three school facilities. The commentors expressed great concern over potential health impacts to children as a result of landfill gasses and groundwater contamination as well as a safety concern due to increased truck traffic on existing school bus routes.

Corps Response: This issue is a combination of air quality, groundwater and traffic safety concerns. While I am sensitive to the concerns raised, these issues are beyond the regulatory authority of the Corps. As previously indicated, the facility will be required to comply with all applicable air quality and groundwater standards as part of its Part 360 permit. These standards are regulated and enforced by the NYSDEC and USEPA. The traffic safety issues fall within the regulatory purview of the NYSDOT.

Change in Community: Several commentors indicated that the landfill, including the increased noise and traffic, would destroy the rural character of the community. Many commentors indicated that they chose to live in the Ava-Booneville area to

SUBJECT: Environmental Assessment and Statement of Findings for Department of the Army Permit Application No. 95-987-30(1)

escape the noise and pollution of the city and would now would have these problems thrust upon them.

Corps Response: The construction of the landfill may very well alter the nature of the surrounding communities. As with the concern regarding the proximity to school facilities, concerns regarding issues such as traffic, groundwater and air quality are regulated and enforced by other agencies. In response to these concerns, the Authority has indicated a willingness to participate in a host community benefits program to offset some of the potential adverse impacts. According to the Authority, the Town of Ava has indicated that, as of the present date, it has no interest in discussing such a program. The Corps of Engineers has no authority to require the adoption of such a program by the Town or the Authority.

Historic Cemetery: Some commentors, including descendants of the original Gleaseman homestead family, expressed concern that the commissioned archaeological study failed to locate alleged grave sites of the two infant Gleaseman daughters.

Corps Response: The Authority has worked with the NYSOPRHP and some members of the Gleaseman family to try and locate the historic cemetery. A professional archaeological study was completed on-site, but did not locate this area. In addition, the Authority developed a construction site monitoring plan which includes a provision for an archaeologist to be on site during all earth work operations. The NYSOPRHP has accepted both the archaeological study and the monitoring plan for the project site.

Site Selection Methodology: Some commentors indicated that the site selection process was not followed correctly and should be re-examined. Specifically, they indicated that a third site, MID-9, should have been investigated on-site because the WLE-5 East site contained wetlands and would require additional waivers from the NYSDEC.

Corps Response: The applicant coordinated with State and Federal Agencies and held numerous public hearings throughout the siting process. Each modification in the siting process was made after a review of the public and agency comments received. The decision to pursue the WLE-5 East site was consistent with comments made by the agencies, including the Corps, regarding suitability of the proposed parcels. The Authority determined, in consultation with the NYSDEC and the Corps, that because the WLE-5 East site was suitable for the proposed project, no further investigation of the MID-9 site was necessary.

Threatened Bird Species: A few commentors, including one local ornithologist, indicated that the project would destroy or adversely impact nesting habitat for local and migratory birds at or near the project site, including the Upland Sandpiper (*Bartramia longicauda*), Least Bittern (*Ixobrychus exilis*), and Northern Harrier (*Circus cyaneus*), species identified by the

SUBJECT: Environmental Assessment and Statement of Findings for Department of the Army Permit Application No. 95-987-30(1)

NYSDEC as threatened under State regulations. A bird survey conducted in 1993 recorded 51 bird species on or near the project site, and identified several species, such as Osprey (*Pandion haliaetus*), Bald eagle (*Haliaeetus leucocephalus*), and Peregrine falcon (*Falco peregrinus*) which may visit the site during migration, although their presence on the site was not documented.

Corps Response: The Corps of Engineers considers impacts to bird species within the scope of impacts to fish and wildlife habitat. However, our evaluation emphasizes potential impacts to aquatic resources. The USFWS did not identify any species regulated under the Federal Endangered Species Act (ESA) which would be impacted by the proposed project. The nesting bird species identified in the submitted comments are not regulated under the ESA and as such are not afforded any special protection under Section 404 of the Clean Water Act. The NYSDEC is responsible for administration of New York State endangered species protection regulations. However, it should be noted that the proposed mitigation for the projected wetland impacts has been designed to ensure no net loss of wetland habitat functions. Three of the mentioned species, the least bittern, osprey and northern harrier, are associated with shallow, emergent marsh habitat, some of which will be created as part of the proposed wetland mitigation.

Property Values: Some commentators indicated that the proposed landfill would decrease their property values.

Corps Response: The resale value of homes and property immediately adjacent to the landfill may very well be reduced as a result of the proposed project. In most landfill proposals, the project sponsor enters into a host community benefits agreement with the affected municipality. Based upon documentation submitted by the Authority, they are willing to enter into such an agreement with the Town of Ava. The host community benefit agreement would include a property value protection package. The specifics of such an agreement are best worked out between the Authority and the Town of Ava. As stated above, the Corps lacks the authority to require the adoption of a host community benefit package.

Aesthetics: Many commentators objected to the eventual landscape, which would include a "mountain of garbage" over 100' tall which would alter the local viewshed and be seen from far away. Adjacent property owners indicated that the change in appearance would ruin their enjoyment of the rural landscape.

Corps Response: The construction and operation of the landfill may change the nature of the existing landscape. The pastoral appearance of open fields dotted with grazing cows will be replaced with heavy machinery, earthwork, supporting buildings and associated structures. This inescapable result will have an adverse impact on the aesthetic quality of the area. It is impossible to avoid adverse impacts to aesthetics when

SUBJECT: Environmental Assessment and Statement of Findings for
Department of the Army Permit Application No. 95-987-30(1)

constructing a facility such as this, however, appropriate measures need to be taken to try and minimize and mitigate for these impacts. In order to mitigate for impacts to aesthetic quality the Authority has proposed to plant evergreen trees around the site which will shield the adjacent property owners from most of the structures and should also help dampen the noise from the site. As stated above, some of these impacts are also proposed to be mitigated through a host community benefit package, which would include a property value protection program. The applicant has also acquired buffer property around the landfill footprint to minimize the number of people impacted by the proposed project.

Blowing Garbage/Debris: Several commentors indicated that the project would result in waste being blown off the site and littering the surrounding area.

Corps Response: This concern, as with the concern regarding vectors, is best addressed through the day-to-day regulation of the landfill. Regulation of landfill operation is the responsibility of the NYSDEC under Part 360.

Environmental Justice: Several commentors indicated that the siting of the landfill was in violation of an executive order which stated that environmentally destructive projects could not be placed in areas populated primarily by low income, rural or ethnic minorities.

Corps Response: Executive Order 12898, issued February 11, 1994, indicates that each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies and activities on minority populations and low-income populations. In order to evaluate potential environmental justice issues as described in Executive Order 12898, the Authority conducted a socio-economic comparison of the Town of Ava with the remainder of Oneida and Herkimer Counties. This study, based upon 1990 census figures, concluded that the residents of the Town of Ava included fewer minority groups than the overall reference community (Oneida and Herkimer Counties). In addition, the study concluded that the median household income for the Town of Ava was above the median incomes for both Oneida and Herkimer Counties, ranking 25th out of the 49 municipalities tabulated. The median household income was significantly above the cities of Utica, Herkimer and Rome.

The USEPA Office of Environmental Justice defines environmental justice as the fair treatment and meaningful involvement of all people regardless of race, color national origin or income with respect to the development and enforcement of environmental laws, regulations and policies. According to the information submitted by the applicant, it appears that the people of the Town of Ava were not excluded from the public participation process, nor are they being discriminated against based upon race, color, national

SUBJECT: Environmental Assessment and Statement of Findings for
Department of the Army Permit Application No. 95-987-30(1)

origin or income. It is true that landfills tend to be sited in rural areas, as this is where the fewest people would be impacted and this is where the necessary amount of available land exists. However, there is no evidence that the siting of a landfill in this location represents a breach of environmental justice since it does not result in disproportionately high and adverse human health or environmental effects on minority or low income populations.

Proximity to the Veteran's Memorial Forest: The project site is located adjacent to a county reforestation project. In 1951, Oneida County dedicated the site as the Veteran's Memorial Forest. The site includes a small monument and turn out area. Commentors indicated that siting a landfill immediately adjacent to this area insults the memory of the those who served and died for their country. They indicated that the solitude of the forest area would be destroyed by the noise, smell and escaped debris associated with the planned landfill. In addition, they argued that the primary value of the site, which is its location in an quiet, rural area, would be eliminated if a landfill were permitted on the adjacent property.

Corps Response: We all have a duty to honor and cherish the memory of those service men and women who have made the ultimate sacrifice for their country. The Veteran's Memorial Forest is a cultural resource that is valued by the public. In particular, the site has been designed to evoke a feeling of solitude that allows visitors the opportunity for inner reflection. Although this site is an important cultural resource it is not listed or eligible for listing in the National Register of Historic Places, nor does it qualify as a "historic site" under Corps regulations. because no battle or treaty ceremony actually occurred at this location.

Avoiding adverse impacts to cultural resources such as the Veteran's Memorial Forest should be a priority for the Authority. in fact, the Authority has altered the landfill footprint, moving it away from the forest. An open space buffer approximately 1,300 feet in width separates the landfill from the forest edge. Since the direction of the prevailing wind is from west to east, the noise of the landfill will also be minimized because the landfill is located downwind of the forest.

The Veteran's Forest was designated by the county, thus the determination of acceptable adjacent land use and activities within or near the site remains, for the most part, a county matter. There is no Federal jurisdiction superseding local authority regarding land uses in or adjacent to local parks or facilities. If this were a site listed or eligible for listing in the National Register of Historic Places, additional Federal constraints would apply to the site under the National Historic Preservation Act, and further coordination through the New York State Office of Parks, Recreation and Historic Preservation or potentially the Advisory Council on Historic Preservation could is often necessary. However, no claim of such eligibility has

SUBJECT: Environmental Assessment and Statement of Findings for Department of the Army Permit Application No. 95-987-30(1)

been raised during the evaluation of this project. NYSOPRHP, the lead agency in New York for National Register issues, has reviewed the proposal and has not lodged any objection to the project on the basis of impacts to the Veteran's Memorial Forest.

Finally, the Authority has attempted to work with the local veteran's groups to address their concerns. These attempts are still ongoing.

Economic Stability: Some commentators indicated support for the proposed landfill. These comments indicated a need from the industrial and commercial community for a reliable, economically viable long term waste disposal option. These commentators referenced the volatility of the waste disposal market and the need for an option not bound by open market (profit maximizing) factors. Other commentators took the opposing view, indicating that the recent drop in tipping fees across the state render the project economically impractical.

Corps Response: The Corps regulatory program's primary focus is to evaluate and address impacts to the aquatic environment. Projecting the economic viability of a proposal and assuming the underlying financial risk is the responsibility of the applicant and outside of our jurisdiction. However, as with the question of project need, I have fully considered the submitted comments. I concur that the solid waste market is volatile and it may be difficult to forecast price into the future. Also, the proposed project will allow the revenue generated by the proposed project to remain in Oneida-Herkimer Counties. The proposed landfill will provide a stable, long term option for solid waste disposal within Oneida and Herkimer Counties. Whether this option is the most cost effective in the long run is beyond the scope of our evaluation.

Potential Sale of the Landfill: Several commentators expressed concern that the Authority would sell its permit to a private firm to develop a landfill and accept waste from outside the two county area.

Corps Response: The Corps has no jurisdiction over the potential sale of the facility once built. Such factors are outside the scope of our public interest review. Any new operator/owner would be required to comply with all Federal, State and local laws, regulations and permits pertinent to the landfill.

Miscellaneous Comments: The attorneys for those opposed to the landfill requested that our permit decision be held in abeyance until all questions regarding the NYSDEC Part 360 permit were addressed. This included waiting for the results of any adjudicatory hearing conducted by NYSDEC.

Corps Response: The adjudication process for the NYSDEC permit is separate from and not relevant to the Corps permit process. Therefore, a decision will be made when our evaluation process concludes.

SUBJECT: Environmental Assessment and Statement of Findings for Department of the Army Permit Application No. 95-987-30(1)

f. The project has been reviewed for the need for the following certifications:

(1) Water Quality Certification pursuant to Section 401 of the Clean Water Act was: **Waived on December 24, 1999, as no final action was taken by NYSDEC within one year of their receipt of our public notice.**

(2) Certification of Consistency pursuant to Section 307(c) of the Coastal Zone Management Act of 1972, as amended was: **NOT REQUIRED.**

3. Individual and Cumulative Impacts of the Proposed Action on the Public Interest:

The decision on this permit application is based upon the advantages and disadvantages of the proposed action in terms of its individual and cumulative impacts on the following public interest review factors: conservation of natural resources, economics, aesthetics, general environmental concerns, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, wetland values, mineral needs, considerations of property ownership, and in general, the needs and welfare of the public.

I have considered the extent and permanence of the beneficial and/or detrimental effects which the proposed activity is likely to have on the public and private uses to which the area is suited; the extent of the public and private need for the activity; and the practicability of using reasonable alternative locations and methods to accomplish the objective of the proposed project.

The following is my summary of the probable individual and cumulative impacts of the project on public interest factors relevant to this particular permit application. This impact analysis reflects any modifications and special conditions noted above in Item 2 and attached.

SUBJECT: Environmental Assessment and Statement of Findings for
Department of the Army Permit Application No. 95-987-30(1)

Public Interest Factor	Impact							
	NA	+++	++	+	O	-	--	---
Conservation of Natural Resources					P	T		
Economics					P			
Aesthetics						P		
General Environmental Concerns				P		P		
Historic Properties					P			
Fish and Wildlife Values					P	T		
Flood Hazards	NA							
Flood Plain Values	NA							
Land Use				P		P		
Navigation	NA							
Shore Erosion and Accretion	NA							
Recreation	NA							
Water Supply and Conservation					P	T		
Water Quality					P	T		
Energy Needs	NA							
Safety					P			
Food and Fiber Production					P			
Wetland Values				P		T		
Mineral Needs	NA							
Consideration of Property Ownership			P				P	

KEY

+++ Significant Beneficial Impact
 ++ Substantial Beneficial Impact
 + Minor Beneficial Impact
 O No Appreciable Impact
 NA Factor is not Applicable

--- Significant Detrimental Impact
 -- Substantial Detrimental Impact
 - Minor Detrimental Impact
 T Temporary Impact
 P Permanent Impact

Information of particular relevance to this project and the public interest review is as follows:

Public Interest Factors

Conservation of Natural Resources: The project will result in the permanent destruction of approximately 46.6 acres of Federal jurisdiction wetlands. However, these low quality wetlands will be replaced, with a combination of on site and off site mitigation to ensure that there is no net loss of wetland acreage as a result of this project. In addition, the wetland mitigation

SUBJECT: Environmental Assessment and Statement of Findings for
Department of the Army Permit Application No. 95-987-30(1)

will be completed well before many of the wetland impacts are realized, giving the mitigation areas an opportunity to establish before the functions of the impacted wetlands are lost. In addition, the project conserves a substantial acreage of higher quality wetlands on the project site. Both the avoided wetlands and the mitigation wetlands will be preserved in perpetuity via deed restrictions or conservation easement.

Economics: This project will result in tipping fees and landfill revenue being retained within Oneida and Herkimer Counties instead of being exported. Arguments have been made both for and against the potential economic benefits of the proposed landfill. These arguments hinge on different interpretations of the same data. Due to the uncertainty regarding potential economic impacts of the proposed project, and the fact that project need is fully considered as part of the NYSDEC review under their Part 360 permit process, I have not included the economic benefits asserted by the applicant in my evaluation of this action.

Aesthetics: The proposed project will have some degree of adverse impact on the aesthetic quality of the site, particularly during construction and operation of the landfill. Mitigation steps proposed by the Authority include the planting of trees around the perimeter of the site to provide a visual barrier, the acquisition of surrounding properties as buffer and the negotiation of a host community benefits package. Once the landfill has reached capacity, it will be retained as open space and will experience no further development, thus restoring the preproject condition (i.e.. undeveloped rural land).

General Environmental Concerns: The project will have some adverse impacts that are classified as general environmental concerns. There will be a loss of existing wetlands and a potential alteration of air quality within the project area. The wetland loss will be adequately mitigated on-site and off-site. The changes in air quality may not contravene applicable USEPA standards as regulated under the NYSDEC Part 360 permit. On-site impacts should be measured against potential impacts of other options, such as long distance hauling of the waste stream and the air pollution caused therein. Arguments have been made that the project will contaminate groundwater at the site and off-site. However, appropriate regulatory control for these issues, as with air quality concerns, is found within the NYSDEC Part 360 permit process.

Historic Properties: The Authority has worked with NYSOPRHP to ensure that the project has no impacts on historic properties listed or eligible for listing on the National Register of Historic Places. A construction monitoring plan has been created and accepted by the NYSOPRHP and the Authority. This plan outlines the specific procedures that must be followed in the event the historic cemetery or other important here-to-fore unknown archaeological resources are encountered. Impacts to the

SUBJECT: Environmental Assessment and Statement of Findings for
Department of the Army Permit Application No. 95-987-30(1)

Veteran's Memorial Forest, a cultural site, are considered pursuant to established Corps regulations. These impacts have been avoided and minimized by relocating the landfill footprint outside of the forest area and maintaining an approximately 1,300 foot open space buffer zone between the landfill footprint and the forest property line. While impacts to the Veteran's Forest have been considered, the forest is not listed or eligible for listing on the National Register of Historic Places nor does it qualify as a "historic site" as defined by Corps regulations. The forest was designated by Oneida County and therefore determinations of acceptable adjacent land uses are primarily a County responsibility.

Fish and Wildlife Values: The project will not have a substantial impact on fish and wildlife values. The areas proposed to be filled currently have little wildlife value and have been used as cow pasture. The wooded areas around the perimeter of the site, which the project proposes to avoid, contain most of the high quality fish and wildlife habitat on the property. The water quality of Moose Creek will be protected via a comprehensive stormwater management plan and groundwater monitoring plan which will ensure that contaminated water does not reach this watercourse.

Flood Hazards: NA

Flood Plain Values: There will be no impact to flood plain values. All site runoff will be handled by the proposed stormwater retention system. On March 20, 2001, I spoke with Mr. William Neckaman, NYSDEC, who referenced the FEMA for the site and indicated the project is not located within a mapped 100 year flood plain.

Land Use: The project will convert the existing open space to a sanitary landfill. As the project develops property values near the facility may decline. Mitigation for the adverse impacts is proposed to take the form of a host community benefits package which the Authority has agreed to develop in partnership with local interests.

Navigation: NA

Shore Erosion and Accretion: NA

Recreation: NA

Water Supply and Conservation: Based upon the information submitted by the Authority, this project should not have any impact on local water supplies. The NYSDEC has determined that the project does not overlay a principle groundwater aquifer. In addition, as noted above, only uncontaminated water will be allowed to reach area surface water courses. According to a hydrologic study of the area prepared by the Authority's consultant, the amount of water to be diverted from the site via

SUBJECT: Environmental Assessment and Statement of Findings for
Department of the Army Permit Application No. 95-987-30(1)

leachate collection and groundwater suppression will represent only a small portion of the overall watershed that feeds Moose Creek. Groundwater monitoring stations will be installed to ensure that contaminated groundwater does not escape the project site. NYSDEC retains jurisdiction over the sampling of monitoring wells at the landfill site as part of the Environmental Monitoring Plan required under the Part 360 permit. In addition, the applicant has offered to develop, in cooperation with local residents and Town officials, a residential water testing program which would include all the adjacent property owners to ensure that their wells do not become contaminated. In the event that wells become contaminated, the Authority has indicated that it will take immediate action in order to provide the residents with an alternative source of water.

Water Quality: Water quality will be protected on and off the site via leachate collection, groundwater suppression and monitoring wells. In addition, if a permit is issued, Special Conditions will be included requiring that all erosion and sedimentation controls are in place prior to commencement of construction and remain in place during all phases of construction to ensure that the project does not increase turbidity in Moose Creek.

Energy Needs: NA

Safety: Several questions have been raised regarding potential adverse impacts to safety associated with this project. These revolve around increased traffic, potential air quality reduction and contamination of groundwater. Issues relating to air and groundwater are directly regulated by NYSDEC. The question of highway safety stems from the increased traffic which will occur as a result of the project. Objections were raised concerning the simultaneous use of the existing roadways by the students and faculty of the nearby school, heavy trucks hauling waste to the landfill and tanker trucks removing leachate water for transport to a treatment plant. Concerns were raised that the increased truck traffic would lead to more accidents, increasing the public risk, and that the nearest hospital was many miles away. In addition, several commentators indicated that the winters in the Ava area are especially severe, causing roads to be impassable on many occasions. The NYSDOT was contacted and indicated that the proposed increase in traffic would not exceed the engineered carrying capacity of the roadways. The NYSDOT indicated that the Authority would be required to complete some road improvements as part of their permit requirements. The Authority has indicated that during harsh weather conditions, operations will be coordinated to ensure that transport occurs during safe highway conditions. This could include the temporary storage of waste at the Authority's transfer station. Finally, the Authority has proposed to fund one EMT at the nearby West Leyden Fire Department during landfill operating hours and to make available any landfill employees who are NYS EMT certified in the event that an accident were to occur. Details of this proposal would

SUBJECT: Environmental Assessment and Statement of Findings for
Department of the Army Permit Application No. 95-987-30(1)

need to be negotiated between the Authority and the Village of
West Leyden.

Food and Fiber Production: The project will displace an
existing dairy farm. However, the livestock will be relocated to
other property. No impact to overall food and fiber production
is anticipated.

Wetland Values: There will be no long term adverse impact to
wetland functions and values at the project site. Although the
total acreage of wetlands to be filled is large (46.6 acres), the
majority of these wetlands function primarily as flood storage
with limited wildlife habitat value. The flood storage function
will be mitigated through the proposed stormwater management
plan, which is designed to be able to accommodate the 100 year/24
hour storm. The proposed mitigation wetlands will be designed to
produce higher quality wildlife habitat, ensuring that there is
no net loss of wetland functions on the project site. In
addition, there will be no disturbance from grazing cattle,
allowing more diverse vegetation to flourish. Additional wetland
restoration off the project site will ensure that there is no net
loss of wetland acreage in the watershed as a result of the
project. Construction of the mitigation wetlands will be
completed either concurrently with, or in advance of, the
majority of the wetland impacts. The bulk of the wetland
functions and values on the project site are served by the 123.6
acres of high quality wetlands which are avoided by the proposed
project. These wetlands contain a large diversity of habitats
including some wet meadow, scrub/shrub, emergent, forested and
open water. The avoided wetlands should not be impacted by the
landfill, however, if a permit is issued a Special Condition will
be included which requires that the avoided wetlands will be
monitored as part of the required wetland mitigation.

Mineral Needs: NA

Consideration of Property Ownership: The project will allow
the Authority to gain a return on their investment in this parcel
of land by providing a long term solution to solid waste
management for the region. However, this benefit will not come
without cost to the hosting community. The impacts can be
mitigated somewhat by the proposed host community benefits plan.
This plan is essentially an agreement between the Authority and
the local government that does not involve the Corps of
Engineers.

4. Section 404(b)(1) Evaluation: I have evaluated the proposal
with regard to the Guidelines promulgated by the U.S.
Environmental Protection Agency (40 CFR 230) for the
specification of disposal sites for the discharge of dredged or
fill material into waters of the United States. I have
determined the following with regard to the project (this finding
reflects any modifications and special conditions noted above in
Item 2 and attached):

SUBJECT: Environmental Assessment and Statement of Findings for
Department of the Army Permit Application No. 95-987-30(1)

a. The discharge represents the least environmentally damaging practicable alternative, and if located in a special aquatic site (40 CFR Part 230, Subpart E) the activity associated with the discharge requires direct access or proximity to, or must be located in, the special aquatic site to fulfill its basic purpose. This finding is based on the following study of practicable alternatives:

Alternatives to construction of the proposed landfill include the no action alternative (exporting the entire waste stream), constructing the landfill in another location within Oneida and Herkimer counties, constructing small and individual municipal landfills within the counties. The no action alternative would require the long distance hauling of waste to another location, potentially several hundred miles away. This option has its own array of impacts complicated by the fact that the site selected for receipt of the solid waste may not always be available over the long term, pending potential market changes and legislation in Congress. In addition, the waste export alternative would require that the accepting landfill be designed with at least as many environmental safeguards as the proposed project. Otherwise, placing waste in an inferior landfill would not constitute a less environmentally damaging alternative. The market for waste export, once the Seneca Meadows and CID landfills are eliminated (no liner technology), would seem to change as capacity is not as readily available as it might seem. Many of the remaining landfills in New York State are owned by public entities, some of which have restrictions on accepting waste from other locations.

With regard to the option of constructing a similar facility at a different location within Oneida and Herkimer counties, I am satisfied that the siting procedure used to identify the WLE-5 East site was sufficiently thorough to satisfy the test for alternative locations. The siting process narrowed the original 149 sites to 79 and then to 10 and finally to two. Of these two sites, the eastern portion of the WLE site was determined to be the most feasible from an environmental and capacity related standpoint. Throughout the siting process, input was solicited and received from interested agencies and the general public. The siting criteria utilized several factors, including the presence or absence of wetlands, with sites receiving both numerical and non-numerical rankings. Both ranking systems indicated that the WLE-5 site was the primary site for the proposed project.

A third alternative, not mentioned above, would be for individual communities to handle their own waste streams, including constructing their own landfills. This option is not practicable in the current regulatory climate, but was used historically. These old, unlined landfills are potentially far more damaging than the proposed single facility as they often had non-point discharges, employed few, if any, safety measures, and little in the way of groundwater protection. In contrast, the proposed

SUBJECT: Environmental Assessment and Statement of Findings for
Department of the Army Permit Application No. 95-987-30(1)

project will be constructed with a double composite liner system, employ extensive monitoring and safety measures and will be regularly monitored for a period of thirty years beyond its closure. Other potential alternatives, such as incinerating the waste stream have been studied by the Authority and determined not to be economically feasible. The Draft Environmental Impact Statement prepared by the Authority indicates that the waste disposal costs to build and operate a waste to energy incinerator would be substantially higher than costs associated with the landfill.

b. The activity will not violate applicable State water quality standards or effluent standards promulgated under Section 307 of the Clean Water Act. The activity will not jeopardize the existence of a Federally listed threatened or endangered species or its habitat, nor will it violate the requirements of any Federally designated marine sanctuary.

c. The activity will not cause or contribute to significant degradation of waters of the United States, including adverse effects on human health, life stages of aquatic life and other wildlife dependent on aquatic ecosystems, ecosystem diversity, productivity and stability, and recreational, aesthetic, and economic values.

d. Appropriate and practicable steps have been taken to minimize the potential adverse impact of the discharge on the aquatic ecosystem. These actions include the following:

The footprint of this project was adjusted to avoid the higher quality wetland areas on the site and minimize the amount of wetland that will be filled. In addition, at the request of the NYSDEC, a gravity leachate collection system and groundwater suppression system were incorporated into the design. This adds a potential safeguard against the breakdown of mechanical equipment over the life of the landfill. The grading plan was altered to reduce the amount of excavation and required groundwater suppression. Also, an extensive buffer area was incorporated around the landfill footprint to decrease potential impacts to surrounding properties. Evergreen trees will be/have been planted to act as a partial visual barrier for adjoining properties. In order to ensure that impacts to waters of the United States are minimized during construction, the applicant has developed a comprehensive stormwater pollution prevention plan which describes measures to be taken on-site during construction and operation of the landfill. These measures include, but are not limited to, the following:

- Earthen dikes and temporary swales to divert clean water around disturbed areas
- Check dams in roadside swales to reduce velocities and capture sediment before it leaves the construction area

SUBJECT: Environmental Assessment and Statement of Findings for Department of the Army Permit Application No. 95-987-30(1)

- Silt fences and hay bales to temporarily trap sediment laden waters and allow suspended solids to settle out of the stormwater runoff
- Sediment traps at the outlets of drainage ways to trap any remaining sediments
- Mulching and seeding of exposed surfaces as soon as possible to re-establish vegetative cover

e. There is minimal potential for the discharge to have any significant short-term or long-term effects on the physical substrate at the disposal site; on water current patterns, water circulation, and normal water fluctuations; on the kinds and concentrations of suspended particulates in the vicinity of the disposal site; on the level and availability of contaminants; on the structure and function of the aquatic ecosystem and organisms, both individually and cumulatively; and, on the disposal site. There is further a minimal potential for the discharge to have any significant short-term or long-term cumulative or secondary effects on the aquatic ecosystem.

5. I have reviewed the administrative record for this permit application, including the Environmental Impact Statement prepared by the authority, and determined the following with regard to the proposed activity subject to any modifications and special conditions noted above in Item 2 and attached:

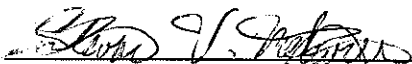
a. The act of granting a permit for this work does not constitute a major Federal action significantly affecting the quality of the human environment. A Finding of No Significant Impact is appropriate for this project. Accordingly, an Environmental Impact Statement is not required.

b. I have determined that the discharges of dredged or fill material comply with the USEPA Guidelines at 40 CFR 230 with the inclusion of appropriate conditions.

c. I have carefully considered and balanced all of the beneficial and detrimental effects relating to the final proposal and find that it will not have a significant individual or cumulative impact on the environment nor will it contravene the public interest. There are no unresolved conflicts as to resource use.

6. The proposal has been analyzed for conformity pursuant to regulations implementing Section 176(c) of the Clean Air Act. It has been determined that the activities proposed under this permit will not exceed *de minimus* levels of direct emissions of a criteria pollutant or its precursors and are exempt by 40 CFR Part 93.153. Any later indirect emissions are generally not within the Corps continuing program responsibility and generally cannot be practicably controlled by the Corps. For these reasons a conformity finding is not required for this action.

SUBJECT: Environmental Assessment and Statement of Findings for
Department of the Army Permit Application No. 95-987-30(1)

Prepared By: 
Steven V. Metivier
Biologist


Date: April 19, 2001

Reviewed By: 

Date: 4/23/01

7. In view of the above findings, I have decided to issue a Department of the Army permit for this work and to include where appropriate certain conditions which will safeguard the environment. This decision is not contrary to any state or local decisions as specified in 33 CFR 320.4(j)(2) and (4). Special Conditions to which the project will be subject are attached to this document.

Approved By:


Glen R. DeWillie
Lieutenant Colonel, U.S. Army
District Engineer

Date: 5/21/01

SUBJECT: Environmental Assessment and Statement of Findings for
Department of the Army Permit Application No. 95-987-30(1)

SPECIAL CONDITIONS:

1. The permittee shall assume all responsibility for complying with all Special Conditions. If the reports required under these conditions are not submitted by the specified date, unless a time extension is approved in writing by the Corps of Engineers, the permittee shall pay stipulated penalties in the amount of \$50 per day for each day past the submittal date. Such funds shall be submitted by check made payable to "The Finance and Accounting Officer," and forwarded directly to the Office of Counsel, U.S. Army Corps of Engineers, Buffalo District, 1776 Niagara Street, Buffalo, New York 14207-3199.

2. That as mitigation for unavoidable impacts to approximately 46.6 acres of regulated wetland you shall create and/or restore approximately 32.6 acres of wetland on the project site, provide funding for the restoration and/or creation of at least 22 acres of wetland outside of the project site but within the Black River watershed and preserve at least 56 acres of ecologically significant habitat within the Rome Sand Plains. These three components together make up the "mitigation area" for purposes of this permit.

3. That prior to commencing work in waters of the United States on the project site you shall submit for review a Wetland Mitigation and Monitoring Plan for the Oneida-Herkimer Sanitary Landfill in Ava, New York. This report shall contain, at a minimum, the following components:

a. A baseline survey of the wetland creation areas, including preconstruction contours and vegetative inventory

b. Proposed construction plans and schedule including grading plan, construction methods, erosion controls, proposed wetland planting plan and monitoring point locations. Wetland construction shall be scheduled concurrently with, or prior to, impacts to waters of the United States on the project site. Monitoring locations shall be placed in both the proposed constructed wetlands and the existing, avoided wetlands in order to determine both the success of the constructed wetlands and the continued viability of the avoided wetlands on the project site.

c. Wetland performance goals including vegetative (i.e. vegetative composition, density, percent cover) and hydrologic (i.e. water depth, duration and timing) for both the constructed wetlands and the avoided wetlands. One of the performance goals for the constructed wetlands shall state that no more than 5% of the total vegetative cover may consist cumulatively of Reed Canary grass (*Phalaris arundinacea*), Giant reed (*Phragmites australis*), Purple loosestrife (*Lythrum salicaria*) and Narrow leaf cat-tail (*Typha angustifolia*) at any given time.

SUBJECT: Environmental Assessment and Statement of Findings for
Department of the Army Permit Application No. 95-987-30(1)

d. A monitoring schedule which includes the submission of monitoring reports due not later than December 31 of the first five years following construction. Monitoring reports should include a representative As-Built drawing, plant species list with wetland indicator status, hydrology indicators and a current delineated boundary of the wetland. Representative photographs clearly depicting site conditions shall also be included as well as a summary statement regarding the perceived success of the wetland construction project. Copies of all monitoring reports shall be forwarded to the U.S. Fish and Wildlife Service and the U.S. Environmental Protection Agency at the same time they are provided to the Corps.

e. Location of the Rome Sand Plains preservation site, including proposed preservation measures as well as a contingency proposal if the initial preservation proves unfeasible.

f. Proposed plan for identifying and executing at least 22 acres of wetland restoration within the Black River watershed, including conceptual schedule and contingency measures to ensure that such restoration is performed.

4. That once approved by this office, the mitigation and monitoring plan, including any required changes, shall become the Mitigation and Monitoring Plan for the Oneida-Herkimer Sanitary Landfill in Ava, New York. This final document is incorporated into and made part of this permit. No work in waters of the United States may occur on the project site prior to final approval of the mitigation and monitoring plan.

5. There shall be no construction or placement of buildings, camping accommodations or mobile homes, fences, signs, billboards or other advertising material, or other structures within the limits of the designated mitigation area.

6. Perpetual deed restrictions or conservation easements shall be placed on the mitigation area to guarantee its preservation for wetland and wildlife resources. The restrictions shall specifically state that the mitigation areas are not to be adversely impacted. A certified copy of the recorded deed restriction shall be provided upon execution.

7. There shall be no manipulation or alteration of the authorized mitigation area, water courses, marshes or other jurisdictional areas without first obtaining Department of the Army authorization.

8. That temporary or permanent disposal of trees, brush and other debris in any stream corridor, wetland or surface water is prohibited.

9. That efforts shall be made to keep construction debris from

SUBJECT: Environmental Assessment and Statement of Findings for
Department of the Army Permit Application No. 95-987-30(1)

entering the waterways or wetlands. Any debris found in such areas shall be removed immediately and shall be disposed of properly.

10. That the mechanical equipment used to execute the work authorized herein shall be operated in such a way as to minimize turbidity that could degrade water quality and adversely affect aquatic life.

11. That siltation barriers shall be installed between the wetlands and the adjoining development, to prevent siltation into the wetlands.

12. That during construction erosion control devices such as hay bales or a filter fabric fence shall be used to prevent erosion of the dredged material or disturbed soil. The hay bales or filter fabric fence shall be installed in accordance with appropriate construction techniques, including placing the hay bales and filter fabric fence in a shallow trench, backfilling the toe of the filter fabric fence and securing the hay bales with stakes.

13. That as soon as possible following construction all exposed banks and slopes shall be seeded and mulched to prevent erosion.

14. All erosion and sediment control practices shall be in place prior to any grading or filling operations and installation of proposed structures or utilities. They shall remain in place until construction is completed and the area is stabilized.

15. All erosion and sedimentation controls shall be inspected daily and after rainfall events greater than 0.5 inches to ensure that the controls are functioning properly. Inspection records will be prepared and retained on a weekly basis and/or after 0.5 inch rainfall events. These records will be made available to the Corps of Engineers on request.

15. No fresh concrete, leachate, or washings from concrete equipment and trucks, shall be allowed to enter any stream, lake or wetland. Only watertight or waterproof forms shall be used. Wet concrete shall not be poured to displace water within the forms. Excess concrete shall not be discharged into any waterbody or wetland within or outside the project area.

16. All necessary precautions shall be taken to preclude the contamination of any wetland or waterway by suspended solids, sediments, fuels, solvents, lubricants, epoxy coatings, paints, concrete, leachate, or any other environmentally deleterious substance associated with the project.

17. That you shall abide by the "Topsoil Stripping Monitoring Plan, 'Pioneer Cemetery' Location Study, for the Oneida-Herkimer Solid Waste Management Authority Landfill Siting Project" cited in the November 24, 1999 letter from Robert Kuhn, Assistant

SUBJECT: Environmental Assessment and Statement of Findings for
Department of the Army Permit Application No. 95-987-30(1)

Director, NYSOPRHP, to Michael Wolak, Director of Engineering,
Oneida-Herkimer Solid Waste Authority. To this end, construction
will be monitored by a professional archaeologist when work
reaches the area identified as potentially containing the pioneer
cemetery.